IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL **WRIT PETITION NO. 24 OF** 2004

Shri Motilal Maikulal Gupta ...Petitioner

versus

State of Maharashtra & Anr. ...Respondents

Ms. Anita G.Bhaktwani for the petitioner.

Ms.Shilpa Gujar, P.P. for State.

Shri Sachin V. Dhakephalkar for Respondnt No.2.

CORAM: S.K.SHAH,J.

DATE : 12th June,2006.

P.C.

1. Heard Counsel on both sides.

2. This Writ Petition is filed against the order passed by the Additional Sessions Judge, Thane, whereby he dismised the Revision as it cannot be entertained.

3. The petitioner had filed private complaint for the offence punishable under section 138 of the

Negotiable Instruments Act. The Magistrate instead of taking cognizance of the allegations made in the complaint passed the order under Section 156(3) of the Criminal Procedure Code directing the police to investigate and register the offence. The police investigated the same and filed report on the basis of which the learned Magistrate took cognizance of the offence and proceeded with the trial and recorded the order of acquittal of the respondent of the offence punishable under Section 138 of the Negotiable Instruments Act. It is this order which was challenged by the complainant-pettiioner before the learned Additional Sessions Judge, Thane, by filing Revision under Section 397 of the Cr.P.C.

4. A perusal of the impugned order indicates that the Additional Sessions Judge took the view that the order of acquittal was assailable under Section 378 of the Cr.P.C. Therefore, he passed the impugned order.

5. The learned Counsel representing the petitioner however submits that the State could have challenged the order of acquittal under Section 378 of the Cr.P.C. but that right was not available to the complainant as the petitioner’s complaint was converted in a police case. Since the petitioner had no right to file appeal, she could only file Revision

under Sec. 397 of the Cr.P.C. Therefore, the learned Counsel for the petitioner submits that the view taken by the learned Additional Sessions Judge, was illegal.

6. The subnmission made on behalf of the petitioner is absolutely correct. Under Section 378 of Cr.P.C. appeal is provided against the order of acquittal. Section 378 of Cr.P.C. does not provide the right of appeal to the complainant in a police case. In view of Section 372 of Cr.P.C., no appeal or revision lies in a criminal case except as provided for and therefore the remedy to the complainant was under Section 397 of Cr.P.C. Under the provisions of Section 397 Cr.P.C., the High Court or the Sessions Court have powers to call for the records of the trial Court. It is a settled position of law that when the two forums are available, it is the lower forum which should be approached first. He should have approach the Sessions Court first.

7. In such circumstances, the petitioner being the complainant in a police case, where State has not filed appeal against the order of acquital, rightly approached the Sessions Court in Revision under Section 397 of Cr.P.C. Therefore, the order passed by the learned Additional Sessions Judge that Revision is not maintainable was erroneous and the same is quashed

and setaside. The Revision shall be restored and decided on merits in accordance with law.

8. It appears that the Revision that was filed was also time-barred as it was filed after a period of about 1-1/2 years. Liberty is granted to the petitioner to file an application for condonation of delay in filing the Revision before the Sessions Court. The same shall be decided on merits. All contentions are left open. The learned Additional Sessions Judge, Thane,if entertains the Revision Application after considering the application for condonation of delay, shall decide the same on merits without being carried away by the observations made in his order.

The petition stands disposed of.

(S.K.SHAH,J.)